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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

DEMIER JONES, Plaintiff and Respondent, v. MICHAEL FELDER, Defendant and Appellant.	B151828 (Los Angeles County Super. Ct. No. LF000025)

APPEAL from an order of the Superior Court of the County of Los Angeles. Joanne O'Donnell, Judge. Affirmed.

Louis P. Dell for Defendant and Appellant.

L. Stewart, Chief Attorney Los Angeles County Child Support Services Department, Nancy K. Ruffolo, Attorney-in-Charge, Fesia A. Davenport, Staff Attorney, for Plaintiff and Respondent.

INTRODUCTION

This case arises out of a parentage action filed by respondent, Demeir Jones, against appellant, Michael Felder. Appellant appeals the trial court's finding that certain provisions of a stipulation for child support and order are ambiguous such that his child support obligation remained in effect after October 1994, at the time the parties' child was four years old. Appellant also appeals the trial court's denial of a refund of an alleged overpayment of child support, a stay of enforcement by the County of Los Angeles of a joint stipulation regarding child support,[1] as well as the denial of a release of appellant's California driver's license.

BACKGROUND

Michael Felder played professional baseball for 10 seasons from 1985 through 1994. Following six seasons with the Milwaukee Brewers, he played two seasons with the San Francisco Giants, and one season with the Seattle Mariners. His professional career ended following a shortened season in 1994 with the Houston Astros; professional baseball players went on strike in October 1994 and Felder, then a free agent, was not signed to a new contract with a professional baseball team.

In August 1990, respondent, Demeir Jones, bore a child (Mingon Jones) fathered by appellant, Felder. From July 1, 1990 until January 31, 1992, Ms. Jones received public assistance from the County of Los Angeles, Department of Social Services (County) in order to help her care for Mingon. In February of 1992, the County obtained a Judgment On Stipulation (judgment) Los Angeles Superior Court Case number BD040288. In the judgment, appellant was named as the father of Mingon and ordered

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[1] The County of Los Angeles was not initially a party to case number LF000025. On July 30, 1996, the County filed a "Declaration and Request for Order" and which allowed the County to intervene in this private parentage action.

to pay child support in the amount of $2,324.00 per month until Mingon "reaches 18, marries, dies, becomes emancipated or further order of court."

In February 1993, respondent advised the County that she no longer required the County's enforcement services. The County then notified appellant that he was no longer obligated to pay child support directly to the County.[2]

On December 15, 1993,respondent and appellant through counsel executed a Joint Stipulation (stipulation), which provided in relevant part: "1. Commencing June 1, 1993, [appellant] will pay $3,000 each month to [respondent] in direct child support (payable on the first of each month) and $3,000 each month to a trust account. The trust account will be set up at Coast Federal Bank for the benefit of Mignon and have Mr. Robert Lewis Jones as the trustee. . . . Funds can only be disbursed from the trust account upon the agreement of both parties which shall be communicated in writing directly to the trustee, except for the following purposes: (1) The trust fund shall be used to pay child support of $3,0000 a month in the event of a lock-out or strike in 1993 or 1994; (2) to pay for medical and dental expenses not covered by health insurance; (3) to pay for private schooling upon the agreement of the parties. . . . [¶] . . . [¶] 3. The monthly trust fund and direct support payments by [appellant] will continue until the end of [appellant's] current contract in October 1994. The parties through their counsel, will begin to review informally any adjustment in early 1995. Following the end of [appellant's] contract in October 1994, if a new contract has not been entered into [respondent] will be entitled to draw up to $3,000 a month from the trust fund until the time that [appellant] agrees to another baseball contract or notifies [respondent] and the trustee that he will not be entering into another contract. During this period of time [appellant] has the option of paying child support from sources other than the trust. [¶]

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[2] The letter to Felder sent on or about March 2, 1993 indicated, "The custodial parent has requested that support payments be made directly to her at the following address . . . ."

4. In the event of a lock-out by baseball owners or a strike by the players, [appellant] will not be responsible for any payments to either the trust account or directly to [respondent] for child support. [Respondent] will be entitled to draw up to $3,000 a month from the trust account in the event of a lock-out or strike."

On July 27, 1994, respondent filed an Order to Show Cause (OSC) and Declaration for Contempt against appellant for failure to pay child support pursuant to the terms of the stipulation. The contempt trial was heard on November 7, 1994 before the Honorable Richard G. Kolostian. Judge Kolostian found that appellant had failed to pay support for the period of February 1994 to November 1994 and sentenced appellant to five days in jail with the sentence stayed pending completion of probation.

Between November 1994 and July 1996, appellant paid $28, 434.70 in child support; between August 1996 and October 1997, appellant paid $34.26 in child support.[3] At some point in 1997, the County charged appellant with failure to support Mingon Jones in violation of Penal Code section 270. Between November 1997 and July 2000 appellant paid $17,705.68 in support.

On July 25, 2000, appellant filed an OSC alleging that his child support obligation had ceased as of October 1994 and requesting a refund of $12,7746.71 in overpayments for child support paid through the Los Angeles County Court Trustee, a stay of enforcement of the stipulation and for a release of his driver's license. In response to the request for OSC, the County responded alleging that as of August 1, 2000, appellant owed unpaid child support in the amount of $284,539.49; requesting a reasonable payment plan be implemented; and that a lump sum payment be required for release of appellant's driver's license. The County also filed a Supplemental Responsive Declaration on November 22, 2000 arguing inter alia that: (1) the stipulation is ambiguous and should be construed against its drafter (appellant);

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[3] Respondent received public assistance from the Los Angeles County Department of Public Social Services from September 1995 until November 1997.

(2) a termination of support would violate public policy; (3) the findings of Judge Kolostian in July of 1994 included a finding that the child support obligation continued after October 1994; and (4) that appellant's contention that his support payment ended in 1994 is barred by the doctrine of laches.

On December 6, 2000, a child support commissioner held a hearing on the matters alleged in appellant's OSC. The matter was heard pursuant to Family Code section 4251, subdivision (c). The commissioner made findings and recommendations, however, based upon appellant's objections the matter was transferred to Superior Court for a hearing.

On February 6, 2001, Joanne O'Donnell, Judge of the Superior Court of the County of Los Angeles held a de novo hearing on the OSC. Judge O'Donnell found the terms of the stipulation ambiguous due to poor drafting. She also found that the stipulation did not terminate appellant's obligation to pay child support and that appellant's obligation to pay child support continued after October 1994 at a rate of $3,000.00 per month. Finally she denied appellant's requests for a refund, a stay of enforcement of the stipulation, and release of his driver's license.

The trial court's statement of decision was filed on May 23, 2001 and appellant's notice of appeal was filed on July 17, 2001.

ISSUES RAISED ON APPEAL

Whether appellant is collaterally estopped from arguing that his child support obligation terminated after October 1994 pursuant to the contempt hearing held in November 1994? 2. Whether appellant is barred by the doctrine of laches from arguing that his child support obligation terminated in October 1994? 3. Whether the terms of the stipulation are ambiguous. 4. Whether appellant's obligation to pay child support continues after October 1994?

DISCUSSION

I. Appellant Is Not Barred By the Doctrine of Collateral Estoppel.

The doctrine of res judicata gives certain conclusive effect to a former judgment in subsequent litigation involving the same controversy. It seeks to curtail multiple litigation causing vexation and expense to the parties and wasted effort and expense in judicial administration. (*See Goddard v. Security Title Ins. & Guar. Co*. (1939) 14 Cal. 2d 47; *Bernhard v. Bank of America* (1942) 19 Cal.2d 807; Code of Civ. Proc. §§ 1908, 1908.5, 1911.) Collateral estoppel, or claim preclusion, prevents the relitigation of issues that were actually litigated in a prior action. (*Harman v. Mono General Hospital* (1982) 131 Cal.App.3d 607, 614.) As a general rule, claim preclusion may only occur when there has been a final judgment rendered. A "final judgment" includes any prior adjudication of an issue in another action that is determined to be sufficiently firm to be accorded conclusive effect. (*Sandoval v. Superior Court* (1983) 140 Cal.App.3d 932.)

Historically, the distinct nature of civil and criminal proceedings prevented the general application of the doctrine of res judicata to successive civil and criminal proceedings. Because of the difference in parties and different degrees of proof, it was widely held that a prior criminal proceeding resulting in a conviction or acquittal was not conclusive of guilt or innocence in a subsequent civil proceeding. (*See Balestreiri v. Arques* (1942) 49 Cal.App.2d 664.)

Contempt proceedings can be either civil or criminal in nature. If civil, the judgment rendered in the contempt proceeding will operate as a collateral estoppel upon the defendants to deny the facts found by the contempt proceedings. (*American Fire Etc. Service v. Williams* (1959) 171 Cal.App.2d 397; cf. *Teitelbaum Furs, Inc. v. Dominion Ins. Co*. *Ltd*. (1962) 58 Cal. 2d 601 [holding issues litigated in criminal case have preclusive effect in subsequent civil case].)

Respondents argue that appellant is bared from relitigating the issue of whether his support obligation terminated after October 1994 as the contempt hearing held on

November 7, 1994 determined that he was obligated to pay child support for the months of February through November 1994. We disagree.

The meaning of "issues litigated" for the purposed of determining preclusive effect is far from clear and often a difficult problem facing a second court where the former judgment does not show on its face whether the particular issue was decided. California Code of Civil Procedure is little help. Code of Civil Procedure section 1911 states that an issue litigated is deemed to have been litigated when it has "been adjudged in a former judgment which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto."

The party asserting collateral estoppel has the burden of proof to show that the issue was previously adjudicated. (*Emerson v. Yosemite Gold Min. Etc. Co*. (1906) 149 Cal. 50, 57; *Horton v. Goodenough* (1920) 184 Cal. 451, 460; *Quinn v. Litten* (1957) 148 Cal.App.2d 631, 633.) Judge Kolostian in rendering judgment in the contempt hearing held on November 7, 1997 did find that appellant was required to pay child support for the months of September, October and November 1994. However, respondent has not shown either this court or the lower court sufficient evidence to assert that the issue of whether the contract was or might be terminated was ever considered at the contempt hearing. A former judgment is not a collateral estoppel on "issues which might have been raised but were not [or] even though some factual matters or legal arguments which could have been presented were not." (*Bleck v. State Board of Optometry* (1971) 18 Cal.App.3d 415, 429 [quoting Rest.2d Judgments §27 com. e].) Accordingly, because the issue of whether the Joint Stipulation might terminate at some future date was never actually litigated, appellant is not barred under the doctrine of collateral estoppel from asserting that the stipulation contemplated a termination of his obligation to pay support at some future date.

II. *We Decline to Apply the Doctrine of Laches in This Case*

The equitable defense of laches requires unreasonable delay in bringing an action and prejudice to the defendant. (*Asia Investment Co. v. Borowski* (1982) 133 Cal.App.3d 832, 838.) California recognizes no artificial rules as to the lapse of time or

the degree of prejudice necessary before laches is available. (*Alhambra-Shumway Mines, Inc. v. Alhambra Gold Mine Corp*. (1962) 200 Cal.App.2d 322, 326.) Courts strive for an equitable result in cases where laches is urged as a defense. However, even if plaintiff or petitioner is guilty of laches the court may decline to apply the defense. (*Irwin Memorial Blood Centers v. Superior Court* (1991) 229 Cal.App.3d 151, 156.)

What constitutes sufficient delay necessary to a finding of laches is variable with the circumstances. California recognizes no "hard-and fast" rule as to the length of time that operates to bring about laches. (*Lusk v. Krejci* (1960) 187 Cal.App.2d 553, 556.) In a marital property case involving relief from judgment on grounds of mistake, a claim made three years following the divorce was found to be barred by laches. *(In re Marriage of Wipson (*1980) 113 Cal.App.3d 136.)

Appellant entered into the stipulation at issue in December 1993. The stipulation, he argues, was to terminate in October 1994. The OSC hearing requesting a refund for over payment of child support and a decree that the obligation for support had terminated was brought before the trial court in July of 2000, some 69 months (almost 6 years) after the time appellant argues the stipulation was to have terminated. Given that appellant's professional career had been brought to a halt in November of 1994, and given that the support of a minor child is at issue, we find little merit or reason why appellant could not sooner have brought his claim to the trial court.

The doctrine of laches may be invoked, however, only when refusal to do so would permit an unwarranted injustice to be done to an opposing party. (*Volpicelli v. Jared Sydney Torrance Memorial Hosp.* (1980) 109 Cal.App.3d 242, 253.) To show prejudice, the party asserting the defense must show she did or omitted to do something which detrimentally altered her position with respect to the claim or right asserted. (*In re Marriage of Nicolaides* (1974) 39 Cal.App.3d 192, 203.)

While appellant's failure to bring his claim in a period of approximately six years is arguably unreasonable, we find no prejudice exists as a result to respondent given that she

did not alter her position. Respondent maintains that appellant has a continued obligation to pay child support, a claim which respondent has not acquiesced to despite appellant's failure to make required payments. Accordingly, because respondent has not altered her position or acquiesced to appellant's failure to pay child support, she has suffered no prejudice from appellant's failure to sooner prosecute his claim. Therefore, we decline to apply the doctrine of laches in this case.

III. *The Joint Stipulation is Ambig*uous.

Language in a contract or agreement is ambiguous when it is susceptible to more than a single interpretation. (*In re Marriage of Paul* (1985) 173 Cal.App.3d 913, 917.) As respondent notes, the stipulation is a written agreement and may be as would a contract. (*In re Marriage of Benjamins* (1994) 26 Cal.App.4th 423.)[4]

The first sentence of paragraph three of the stipulation reads, "[t]he monthly trust fund *and* direct support payment by [appellant] will continue until the end of [appellant's] current contract in October 1994." (Emphasis added.) The sentence can be read either as meaning that dual payments both of support and to the trust fund would end in October 1994 such that commencing in November 1994 only a single payment would be required. Alternatively, the language can be read, as appellant asserts, to mean that his support obligations would end entirely in October 1994.

Acknowledging the "inartfully drafted" quality of the stipulation, Judge O'Donnell found the stipulation (agreement) ambiguous, stating, "I find that pursuant to [the Joint Stipulation], Mr. Felder was required to pay $3,000 a month in child support even after October 1994." We agree that the language of the Joint Stipulation is susceptible to

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[4] However, unlike a contract, when a child support agreement is incorporated into a child support order, the obligation is deemed to be court-imposed rather than contractual. (*Armstrong v. Armstrong* (1976) 15 Cal.3d 942, 947.) Additionally, the effect of any modification of the original order is prospective only. (Civ. Code §§ 4700, 4800; *Singer v. Singer* (1970) 7 Cal.App.3d 807, 813.) Furthermore, the extent of the parental support obligation is left to the sound discretion of the court. (*Primm v. Primm* (1956) 46 Cal.2d 690.)

multiple meanings and is therefore ambiguous.

IV. *Appellant's Support Obligation Did Not Terminate in October of 199*4.

A contract is to be interpreted so as to give effect to the mutual intent of the parties at the time the contract was entered into by the parties. (*Healy Tibbits Const. Co. v. Employers' Surplus Lines Ins. Co.* (1977) 72 Cal.App. 3d 741*; s*ee also Civ. Code §1636.) In interpreting a contract, consideration is given to the intent of the parties after taking into consideration the entire contract and the circumstances under which the contract was made. (*Moss Development Co. v. Geary* (1974) 41 Cal.App. 3d 1.)

In a case where uncertainty is not remedied by the rules of contract interpretation we employ the legal maxim of *contra proferentem* and construe the offending language against the drafting party. (*Jacobs v. Freeman* (1980) 104 Cal.App.3d 177, 189.) Under California law, a contract is to be construed most firmly against the party who drafts or supplies it. (*Marshall & Co. v. Weisel* (1966) 242 Cal.App.2d 191; *Warshauser v. Bauer Construction Co.* (1960) 179 Cal.App.2d 44.)

The facts before us indicate that appellant's attorney prepared the stipulation that was ultimately executed by appellant and respondent and their counsel. Given that the rules of interpretation fail to conclusively resolve the plain meaning of the stipulation, the language contained therein must be construed against appellant. The trial court's decision that appellant's support obligation would continue after October 1994 was thus correctly decided.

Not only do the rules of contract interpretation and case law regarding drafting ambiguities persuade us that the trial court correctly found that appellant's support obligation was to continue following October 1994, so do the laws of the state of California which impose upon both parents a duty to support their children. (See Fam. Code §3585.) California courts likewise have broad authority to impose and order parents to support their children. (*Ibid*.)

We allow parties to modify the terms of support agreements when a change of circumstances so requires. (*Puckett v. Puckett* (1943) 21 Cal.2d 833.) We do not,

however, permit parents to agree among themselves to terminate a child support order. (*In re Marriage of Gregory* (1991) 230 Cal.App.3d 112; *Armstrong v. Armstrong, supra,* 15 Cal.3d 942.) To do otherwise would be to sanction an unconscionable result and would possibly unleash a torrent of "reluctant dads" making offers to pay-off disadvantaged mothers in exchange for the right to walk away from their future support obligations, the effect of which could potentially leave thousands of California's children without sufficient support.

DISPOSITION

The order of the trial court is affirmed.

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COOPER, P.J.

We concur:

BOLAND, J.

RUBIN, J.